



WORKING PAPER

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Subject No. 50: Questions related to the environment

**INCLUSION OF INTERNATIONAL CIVIL AVIATION
IN THE EUROPEAN UNION EMISSIONS TRADING SCHEME (EU ETS) AND ITS IMPACT**

(Presented by Argentina, Brazil, Burkina Faso, Cameroon, China, Colombia, Cuba, Egypt, Guatemala, India, Japan, Malaysia, Mexico, Morocco, Nigeria, Paraguay, Peru, Republic of Korea, Russian Federation, Saudi Arabia, Singapore, South Africa, Swaziland, Uganda, the United Arab Emirates and the United States)

EXECUTIVE SUMMARY

This paper examines the issue of inclusion of international civil aviation in the European Union Emissions Trading Scheme (EU ETS) and its impact.

Action: The Council is invited to:

- a) take note of the implication of inclusion of aviation in the EU ETS with regard to provisions of the Chicago Convention;
- b) continue working on the basis of paragraphs 13 and 18 of Resolution A37-19;
- c) re-affirm the importance of the role of ICAO in addressing aviation emissions;
- d) welcome and adopt the Joint Declaration adopted in New Delhi on 30 September 2011;
- e) urge the EU and its Member States to refrain from including flights by non-EU carriers to/from an airport in the territory of an EU Member State in its emissions trading system; and
- f) urge EU and its Member States to work collaboratively with the rest of the international community to address aviation emissions.

<i>Strategic Objectives:</i>	This working paper relates to Strategic Objective C — Environmental Protection and Sustainable Development of Air Transport.
<i>Financial implications:</i>	No additional resources required.
<i>References:</i>	Doc 7300, <i>Convention on International Civil Aviation</i> Resolution A37-19, <i>Consolidated statement of continuing ICAO policies and practices related to environmental protection – Climate change</i> United Nations Framework Convention on Climate Change (UNFCCC) Kyoto Protocol

1. INTRODUCTION

1.1 The European Union Emissions Trading Scheme (EU ETS) is a cap-and-trade scheme that has been running in the EU since 2005. With one allowance representing one tonne of carbon dioxide (CO₂), it operates through the allocation and trading of emission allowances. The total amount of emissions from industry sectors covered by the EU ETS is capped by EU Governments, and allowances are subsequently distributed to operators.

1.2 Regardless of non-EU States' obligations and concerns, the EU unilaterally passed the regulation to include aviation in the European Union Emissions Trading Scheme (ETS). The EU ETS affects all aircraft operators (as defined by their ICAO designator, or if none is available, their aircraft registration numbers) regardless of where they are based, provided that they operate flights departing from and / or arriving at an aerodrome in the EU. Flights made entirely outside the EU will not be covered by the scheme. The EU ETS affects passenger and cargo flights in aircraft with a maximum take-off weight of more than 5 700 kg. A set of special flights, *e.g.* to remote regions, training flights, military flights, *etc.*, will be altogether exempt from the scheme.

1.3 This poses major challenges and risks for aircraft operators. From 2012, aircraft operators will have to surrender one allowance per tonne of CO₂ emitted on a flight to and from (and within) the EU. This covers passenger, cargo and non-commercial flights and applies no matter where an operator is based and non-EU carriers will also need to comply with the scheme. Non-complying aircraft operators face a penalty of approximately €100 per missing allowance on top of the obligation to procure and surrender missing allowances. They may even be banned from operating in the EU.

1.4 All the Member States of European Union have ratified the Chicago Convention.

1.5 The Chicago Convention provides that "The Contracting States recognize that every State has complete and exclusive sovereignty over the airspace above its territory" (*cf.* Article 1). As for the EU ETS formula for calculation, the ETS also applies to parts of the flight outside EU airspace.

1.6 A group of Council and other Member States of ICAO met in New Delhi on 29 and 30 September 2011 to discuss implications relating to inclusion of international civil aviation in the EU ETS. The group adopted a Joint Declaration urging the EU and its Member States to refrain from including flights by non-EU carriers to/from an airport in the territory of an EU Member State in its Emissions Trading Scheme. This Joint Declaration is in the Appendix to this working paper.

2. CONTRADICTIONS

2.1 The inclusion of international civil aviation in the EU ETS is a unilateral measure and in contravention to the articles of the Chicago Convention and its Preamble:

"WHEREAS the future development of international civil aviation can greatly help to create and preserve friendship and understanding among the nations and peoples of the world, yet its abuse can become a threat to the general security; and

“WHEREAS it is desirable to avoid friction and to promote that cooperation between nations and peoples upon which the peace of the world depends;

“THEREFORE, the undersigned governments having agreed on certain principles and arrangements in order that international civil aviation may be developed in a safe and orderly manner and that international air transport services may be established on the basis of equality of opportunity and operated soundly and economically;

“Have accordingly concluded this Convention to that end”.

2.2 The inclusion of international civil aviation in the EU ETS violates the cardinal principle of state sovereignty laid down in Article 1 of the Chicago Convention *viz.* "the Contracting States recognize that every State has complete and exclusive sovereignty over the airspace above its territory."

2.3. The inclusion of international civil aviation in the EU ETS violates the relevant provisions of the *United Nations Framework Convention on Climate Change* (UNFCCC).

2.4. The inclusion of international civil aviation in the EU ETS is a market-based measure (MBM) affecting non-EU States and their operators which has been put in operation without any concurrence of ICAO or the non-EU Member States who are affected by this scheme. ICAO Member States in the 37th Assembly held in September-October 2010 (Resolution A37-19) decided that the ICAO Council will develop a framework for MBMs (which includes ETS) and present it before the 38th Assembly. Implementation of the EU ETS would pre-empt and negate this resolution of the last Assembly which was duly supported by all ICAO Member States, including EU Member States.

3. **IMPLICATIONS FOR INTERNATIONAL CIVIL AVIATION**

3.1 The EU's unilateral inclusion of aviation into the EU ETS does not take into account different social and economic circumstances of different States, in particular developing States, and will curb the sustainable growth of international aviation.

3.2 In the absence of a global framework for MBMs, there is a likelihood of similar competing schemes being introduced by other States (some as a retaliatory measure), bringing about a chaotic situation adversely affecting the sustainability of air transport.

3.3 The unilateral action by the EU and its Member States undermines the role of ICAO in addressing aviation emissions, including pursuant to the request from parties to the UNFCCC.

3.4 Inability to develop complementary national, regional and global endeavours on the basis of collaboration and mutual agreement will negatively impact our capacity to address aviation emissions effectively.

4. ICAO'S POSITION

4.1 Resolution A37-19, in its paragraphs 13 and 18, reads as follows:

13. “*Requests* the Council, with the support of member States, to undertake work to develop a framework for market-based measures (MBMs) in international aviation, including further elaboration of the guiding principles listed in the Annex, for consideration by the 38th Session of the ICAO Assembly;” and

18. “*Requests* the Council, with the support of member States and international organizations, to continue to explore the feasibility of a global MBM scheme by undertaking further studies on the technical aspects, environmental benefits, economic impacts and the modalities of such a scheme, taking into account the outcome of the negotiations under the UNFCCC and other international developments, as appropriate, and report the progress for consideration by the 38th Session of the ICAO Assembly; ”.

Paragraphs 13 and 18 were unanimously accepted by all States.

4.2 ICAO is recognized by all to play a leadership role in matters related to aviation and environment. The introduction of these regional schemes affecting international aviation without ICAO's concurrence undermines ICAO's leadership position and deviates from the established principles of ICAO, *i.e.* to “insure the safe and orderly growth of international civil aviation throughout the world” and to “collaborate in securing the highest practicable degree of uniformity in regulations, standards, procedures and organization” regarding international aviation [*cf.* Articles 44 a) and 37 of the Chicago Convention].

APPENDIX

JOINT DECLARATION

Representatives of Argentina, Brazil, Chile, China, Colombia, Cuba, Egypt, India, Japan, Republic of Korea, Malaysia, Mexico, Nigeria, Paraguay, Qatar, Russian Federation, Saudi Arabia, Singapore, South Africa, the United States of America and the United Arab Emirates;

Recognizing the essential role aviation plays in economic progress and market access for the world economy and its citizens;

Recognizing the importance of sustainable development;

Recalling the relevant provisions of the United Nations Framework Convention on Climate Change (UNFCCC);

Stressing the importance of the Kyoto Protocol to its Parties;

Recalling the importance of Chicago Convention and need for ensuring full compliance with its provisions;

Affirming the importance of the role the International Civil Aviation Organization (ICAO) in addressing aviation emissions, including pursuant to the request from the Parties to the UNFCCC;

Recognizing that international aviation's growth makes it necessary to address the long-term growth of Greenhouse Gas (GHG) emissions that contribute to global climate change;

Noting that the overall increase in civil aircraft fuel efficiency of approximately 70 percent over the last 40 years has significantly reduced aviation greenhouse gas emissions;

Stressing that complementary national, regional, and global endeavours developed on the basis of collaboration and mutual agreement will enhance our capacity to address aviation emissions effectively;

Determining that emphasis should be placed on measures that will reduce aviation emissions while at the same time avoiding adverse impacts on air transport;

Desiring to provide strong leadership and to build upon the significant steps and the positive foundation established by the international community through ICAO's efforts;

1. *Call on ICAO* to continue to undertake efforts to reduce aviation's contribution to climate change;
2. *Intend to collaborate* in support of operational changes and improvements to air traffic management and airport systems, which will tend to reduce emissions of the aviation sector;

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3. *Intend to accelerate* the development and implementation of low-carbon aircraft technologies and sustainable alternative fuels, and sharing of best practice;
4. *Support ICAO efforts* to develop a meaningful aircraft CO₂ standard aiming for 2013;
5. *Oppose* the EU's plan to include all flights by non-EU carriers to/ from an airport in the territory of an EU Member State in its emissions trading system (EU Directive 2008/10/101/EC), which is inconsistent with applicable international law;
6. *Urge* the EU and its Member States to refrain from including flights by non-EU carriers to/ from an airport in the territory of an EU Member State in its emissions trading system;
7. *Urge* the EU and its Member States to work collaboratively with the rest of the international community to address aviation emissions;
8. *Intend to continue* to work together to oppose the imposition of the EU ETS on our operators;
9. *Invite* any other State to associate itself with this declaration.

Adopted at New Delhi on 30 September 2011.

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